IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPEAL NO.640 OF 1988

The State of Maharashtra Appellant

Vs.

1. Sunil Gopal Pawar & ors. Respondents (Orig.Accused)

Smt. V.R. Bhosale, APP for Appellant.
Mr. P.J. Pawar for Respondents.

CORAM : S.S. PARKAR & R.S. MOHITE, JJ.

Date : August 11, 2004.

ORAL JUDGMENT (PER S.S. PARKAR,J.):

1. This appeal is filed by the State against the Judgment and Order dated 20/4/1988 delivered by the Additional Sessions Judge, Pune acquitting respondents-accused of the offences under Sections 304-B, 306 and 498-A of IPC in Sessions Case No.14 of 1988.

2. The prosecution case briefly stated is as follows:-

The incident took place on 30/10/1987 when deceased Anjana wife of respondent no.1 Sunil Pawar caught fire in the kitchen of her matrimonial house as a result of which she died. Respondent No.2 is the mother-in-law of deceased-Anjana. Respondent No.3 is

the sister-in-law of deceased-Anjana i.e. the married sister of respondent no.1. Anjana was married to respondent no.1 in February 1987. Both the parental as well as matrimonial house of Anjana was in the same village i.e. Lasirgaon, Taluka Haveli, District Pune. After Anjana's saree caught fire and she got burn injuries, she shouted and asked for help. The neighbours rushed to the place, including her mother-in-law i.e. respondent no.2, who was at the relevant time in neighbour's house. The husband-respondent no.1, who was also away from the house attending his work was called. Thereafter Anjana was taken to Sassoon Hospital where she was not in a position to speak or give any statement. The Hospital record shows that the history given was of accidental burning. PW 2, the father of Anjana received information about the burning of his daughter and, therefore, he also rushed to the hospital but when he reached there she had already expired. Thereafter post-mortem examination was carried on the dead body. There was 95% burns on the body of Anjana. Following day PW 2 Dynoba Ganpati Advane lodged his F.I.R. Exh.14 to the police station alleging harassment for not meeting the demand to pay money for purchase of auto-rickshaw for respondent no.1. The crime was, therefore, registered for the offences

under Sections 304-B, 306 and 498-A read with Section 34 of IPC against all the three accused persons. After the investigation was over, charge-sheet came to be filed against the respondents-accused and case was committed to the Sessions Court.

3. Before the Sessions Court charges were framed, firstly, for offence under Section 304-B read with Section 34 of IPC, secondly for offence under Section 306 of IPC and lastly for offence under Section 498-A read with Section 34 of IPC. The defence of the accused was of total denial and false implication. The accused had denied that any ill-treatment was given to Anjana by them.

4. On behalf of the prosecution 9 witnesses were examined to prove the prosecution case. PW 1 is Maruti Shivram Yenpure, who was panch for the spot panchanama Exh.12. PW 2 is Dynoba Ganpati Advane, the father of deceased Anjana. PW 3 is Dattatraya Hanumant Jadhav, who was relation of deceased Anjana. PW 4 is Laxmi Kaluram Shinde, who was panch for inquest panchanama (Exh.17) on the dead body. PW 5 is Police Constable Ashok Narayan Sanas, who took the articles to C.A. for examination. PW 6 is Dr. Laxmikant Manohar Saptarshi, who had examined Anjana

when she was admitted to the hospital. PW 7 is Dr.Ramchandra Vishnu Sathaye, who had conducted autopsy on the dead body. PW 8 is Police Head Constable Sarjerao Gulabrao Dhole, who recorded the spot panchanama Exh.12 and had also taken the Special Judicial Magistrate to the Sassoon Hospital for recording the statement of Anjana but she was not in a position to give statement. Lastly, PW 9 is PSI Vijaykumar Dattaram Bhoite, attached to Nehru Stadium Police Chowky, who investigated the case.

5. On behalf of the respondents-accused four defence witnesses were examined. D.W.1 is Eknath Sopan Pasalkar, who was the neighbour of the accused. D.W.2 is Mahadeo Ramchandra Bhuvad, who was another neighour of the accused. D.W.3 is Alka Ramchandra Yenpure, who was also neighbour of the accused. D.W.4 is Alka Eknath Pasalkar, the wife of D.W.1.

6. After considering the evidence on record, the trial court by judgment and order dated 20/4/1988 acquitted all the respondents-accused of all the offences with which they were charged holding that the death of deceased Anjana was due to accidental burning as there was no reliable evidence with regard to the allegations of demand and harassment or ill-treatment.

The said order of acquittal is impugned in this appeal filed by the State.

7. The learned APP contended that since there is 95% burn injuries of Anjana it cannot be a case of accidental burning but it must be a case of commission of suicide by her. Secondly, she contended that in view of the evidence of father PW 2 about the demand for money to purchase a rickshaw by respondents-accused and consequent harassment and ill-treatment for not meeting that demand, the respondents-accused were liable to be convicted for offence under Section 498-A of IPC.

8. We have gone through the evidence of the witnesses and also the reasoning of the trial court and heard the learned APP at length and we find that the view taken by the trial court is a possible view in the facts and circumstances of the case and the findings of the trial court cannot be said to be perverse which would require interference in an appeal against the order of acquittal.

9. PW 6 Dr.Laxmikant Saptarshi had examined Anjana when she was brought to the hospital by her husband and other relations at about 9.30 p.m. on 30/10/1987.

He has deposed that she was not in a position to give history of the case. The case history was given by her husband and accordingly it was noted in the case-papers maintained in the hospital as "Accidental". According to him it was a case of 100% burns. PW 7 Dr. Ramchandra Sathaye has deposed that he had performed autopsy on the dead body of Anjana on 31/10/1987. He had found burn injuries on her face, neck, right upper limbs upto fingers, left upper limbs upto fingers, chest, right and left hypochondirum. According to him total area of burn was about 95% and the burn injuries were antemortem. According to him cause of death was due to shock because of burn injuries.

10. Thus, from the medical evidence it appears that deceased had suffered expensive burn injuries on her body and she was unable to make any statement when she was admitted to the Sassoon Hospital. The fact that she was unable to give any statement is also supported by the evidence of PW 8 Dhole, who had deposed that after he was informed that Anjana was admitted to Sassoon Hospital with 100% burn injuries, he took Special Judicial Magistrate Mr. Dahiwal with him to Sassoon Hospital, Pune but Anjana was not in a position to give statement. Accordingly he informed

his superiors and made station diary entry about the same.

11. From the spot panchanama Exh.12, which is proved by panch Maruti Yenpure PW 1, it appears that at the place of incident one brass stove with one broken stand was seen. The broken stand or leg of the stove was lying near the stove. A tin containing 14 ltrs. of kerosene was found beneath the cot which was kept near the boxes containing grain. The circumstances that the kerosene tin/can which contains maximum 15 ltrs. of kerosene was found at the place of offence with 14 ltrs. of kerosene in it and the finding of broken leg of the stove there were indicative of Anjana burning accidentally. There is one more circumstance which is indicative of catching of accidental fire by Anjana. The food, including fish, was lying on the floor of the kitchen. This would mean that Anjana was busy cooking food when the stove and the utensils of cooked food fell and she caught fire. The trial court was right that these circumstances were possible in case of accidental catching of fire by Anjana due to the fall of stove which also resulted in breaking of leg of the stove. If Anjana were to commit suicide the food would not have been spread on the floor nor there was occasion

for the breaking of the leg of the stove. This was possible in case Anjana had caught fire accidentally because of the fall of the stove and the utensils with cooked food. Similarly, if Anjana were to pour kerosene on her person the kerosene tin/can would not have been found intact with 14 ltrs. of kerosene therein. The aforesaid circumstances are indicative of Anjana catching fire accidentally and, therefore, prmia faice rules out the possibility of Anjana committing suicide.

12. There is no evidence on the record nor any circumstance brought on record to infer that there was quarrel just before Anjana caught fire on her person. The evidence of the defence witnesses show that at the relevant time Anjana was alone in the house. Respondent No.1 i.e. her husband having gone to attend his work as a mechanic and respondent no.2 i.e. the mother-in-law was in the house of her neighbour D.W.1. D.W.1 Eknath Pasalkar has deposed that at about 8.30 p.m. on 30/10/1987 he was taking dinner. At that time accused no.2 was in his house. That time the boys from the neighbourhood ran saying that fire had taken place. Therefore, accused no.2 went to her house and returned saying that there was fire in her house and her daughter-in-law was burnt. He,

therefore, went to the house of the accused. Other persons had also collected there. He saw flames coming from the kitchen room. A bed-sheet was put on the flames. As the fire was still not extinguished, water was poured to extinguish the fire. He saw daughter-in-law of accused no.2 screaming in the flames. He then rushed to Dr. Purohit but he was not there. Then the husband of deceased Anjana was called and thereafter she was removed to hospital. His evidence is also supported by his wife D.W.4 Alka. She has also deposed that the relations between Anjana and her husband and mother-in-law were cordial, apart from corroborating the evidence of her husband that accused no.2 was in their house at the relevant time and on hearing screams accused no.2 went to her house and saw that there was fire in her house. D.W.2 Mahadeo Bhuvad, who is another neighbour of the accused, has deposed that he had heard the shouts of the boys that there was fire. He saw flames in the house of Pawar family. He went there to extinguish the fire. From the evidence of the defence witnesses, it appears that accused no.2, the mother-in-law of the deceased was in the house of her neighbour at the relevant time and accused no.1 i.e. the husband of Anjana was not in the house but he was attending his duty and he came back after he was informed about it

and thereafter Anjana was taken to the hospital by accused no.1 along with the neighbours. The neighbours had helped to extinguish the fire.

13. Firstly, there is no evidence to show that Anjana had committed suicide but the circumstances brought on record by the spot panchanama go to show that in all probability it was a case of accidental fire due to which Anjana was burnt. There is no evidence of immediate instigation from any of the accused. The husband was away from the house at the relevant time and accused no.2 was in the neighbour's house and had gone to her own house and learnt about the fire after hearing the shouts of the boys of the locality. In the aforesaid circumstances, the respondents-accused cannot be convicted for offence either under Section 306 of IPC or for offence under Section 304-B of IPC.

14. So far as the offence under Section 498-A is concerned and also for dowry death, the prosecution had led evidence of PW 2 Dynoba Ganpati Advane, the father of deceased Anjana and PW 3 Dattatraya Hanumant Jadhav, who was relative of deceased Anjana. PW 2, the father of deceased, has deposed that his daughter had told him that accused were asking her to bring Rs.10,000/- from him for purchase of a rickshaw. His

evidence has not been believed by the trial court because of the discrepancies in his deposition in the court and the F.I.R. lodged by him. In the F.I.R. no doubt he makes a mention that he was told by his daughter Anjana that accused no.1 was making demand for money to purchase a rickshaw without mentioning the amount. In the deposition he has made a mention of demand for Rs.10,000/- for the purchase of rickshaw. It is common knowledge that it was not possible to purchase rickshaw for a sum of Rs.10,000/-. Moreover, there was also discrepancy as to when his daughter had told him about the said demand. The allegations made by the father of the deceased in his deposition are not corroborated fully by the F.I.R. lodged by him. In a matter of this kind where, firstly, there is no evidence of commission of suicide and the allegations are made for the first time after the death of Anjana, the evidence should have been corroborated fully by the F.I.R. The trial court has shown the discrepancies in the deposition of P.W.2 and the F.I.R. lodged by him. While in deposition he has stated that during Dasara days of 1987 Anjana went to see him as he was sick and that time she told him that her in-laws were ill-treating her for not meeting the demand for purchase of rickshaw, in the F.I.R. he has stated

that this was told to him when he had gone to bring his daughter to his own house during the festival of Dasara. Moreover, there is also omission to mention the amount of Rs.10,000/- in the F.I.R.

15. Similarly, the evidence of PW 3 Dattatraya Jadhav is not convincing. According to him deceased Anjana was his cousin sister's daughter and when she met him in the month of May, 1987 she had told him that there was a demand of Rs.10,000/- for purchase of rickshaw and also for golden ear-ring by accused. There is no mention of demand for golden ear-ring in the evidence of PW 2, the father of deceased. The trial court has rightly observed that the father would be the first person to whom Anjana would tell about the demand of golden ear-ring if the same was made by the accused persons. The reasons given by the trial court for not accepting the evidence of these two witnesses cannot be faulted. In any way, the reasoning given by the trial court for not believing the evidence of prosecution witnesses cannot be said to be perverse. The view taken by the trial court appears to be a possible view in the facts and circumstances of the case. In the aforesaid circumstances, we see no reason to interfere in the order of acquittal passed by the trial court.

16. In the result, this appeal is dismissed and the order of acquittal recorded by the Additional Sessions Judge, Pune on 20/4/1988 in Sessions Case No.14 of 1988 is confirmed. The bail bonds of the respondents-accused shall stand cancelled.

(S.S. Parkar, J.)

(R.S. Mohite,J.)